



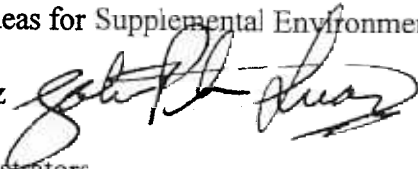
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 5 2004

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Recommended Ideas for Supplemental Environmental Projects

FROM: John Peter Suarez 

TO: Assistant Administrators
Deputy Assistant Administrators
Regional Administrator, Region I-X
Deputy Regional Assistant Administrator, Region I-X

In my June 11, 2003 memorandum, entitled "Expanding the Use of Supplemental Environmental Projects," I encouraged enforcement personnel to consider every opportunity to increase the use of supplemental environmental projects (SEPs), and to include more environmentally significant SEPs whenever possible and appropriate in settling enforcement actions. SEPs are environmentally beneficial projects that a violator is not otherwise legally required to perform, but voluntarily agrees to undertake in settlement of an enforcement action.

All SEPs must conform to the guidelines set out in the May 1998 SEP Policy. Specifically, the project needs to have a nexus to the underlying violation, and is something that the violator is not likely to be required to perform as injunctive relief.¹ Enforcement staff should note that although a project idea may appear to be associated with a particular environmental statute, e.g., the Clean Air Act, a project may be appropriate for inclusion in a settlement for violations of another statute, as long as the project meets the nexus requirement of the SEP Policy.

As part of our efforts to facilitate SEPs that secure significant environmental or public health benefits, the Office of Enforcement and Compliance Assurance (OECA) committed to provide to enforcement staff a list of potential projects that complement priorities for OECA and other Agency program offices. We believe projects such as those listed in the Attachment offer

¹ See May 1998 SEP Policy, page 4. In addition, enforcement staff should also consider the affected community's concerns, in accordance with the *Interim Guidance for Community Involvement in Supplemental Environmental Projects*, issued May 21, 2003.

great potential for providing significant and measurable environmental and/or public health benefits to the environment and the community affected by the violation. These types of potential SEPs include projects that can benefit environmental justice communities impacted by violations. We encourage enforcement staff to consider these and similar projects when reviewing and evaluating SEP options.

In addition, through the June 11, 2003 memorandum, OECA committed to provide access to information on SEPs that are part of concluded settlements, as well as information on potential project ideas. Regions, States and Tribes can now access non-sensitive case information on SEPs through OTIS. (See <http://www.epa.gov/idea/otis/index.html>). Also, we received a number of project ideas from Regions and Headquarters program offices that will be included in an interactive, searchable SEP Library that is currently under development. In order to provide access to these project ideas sooner, we will make a listing of such project ideas available at <http://www.epa.gov/compliance/civil/programs/seps/index.html>.

Projects described in the Attachment are not "pre-approved," and are subject to all the conditions of the May 1998 SEP Policy. As allowed by the SEP Policy, generally, projects may receive up to 80% mitigation credit. In the case of pollution prevention projects and projects proposed by small businesses, government entities, and non-profits, the May 1998 SEP Policy provides that such projects may receive up to 100% mitigation credit if they are deemed to be of outstanding quality.

We appreciate your commitment to include SEPs in settlements, and hope that the attached information assists in facilitating your efforts to secure public health and environmental benefits in addition to those achieved by compliance with applicable laws.

Attachments

cc: B. Gelber, USDOJ
K. Dworkin, USDOJ
Regional Counsel, I-X
SEP Coordinators, I-X
Enforcement Coordinators, I-X

ATTACHMENT

RECOMMENDED SEP IDEAS WITH THE POTENTIAL FOR SIGNIFICANT AND MEASURABLE ENVIRONMENTAL OR PUBLIC HEALTH BENEFITS

Operate and maintain health clinics serving low income and minority communities and sensitive populations. For example, a mobile health unit could provide assistance such as asthma screening and treatment; blood lead level testing and treatment for children in public housing; or testing for baseline medical markers in migrant workers. Examples of possible nexus for such projects, include CAA emissions violations, TSCA §1018 lead-based paint disclosure violations, and pesticide misuse violations.

Lead-based paint abatement in target housing or child-occupied facilities, particularly when the housing is located in an environmental justice community. An example of nexus may be violations of TSCA §1018 disclosure requirements.

Diesel retrofits and/or replacements of buses. An example of nexus may be a violation of the CAA relating to SOX, NOX, or particulate matter.

Retiring Emissions Credits: purchase and retirement of PM, SO₂ and NO_x emission credits. An example of nexus may be a violation of the CAA relating to SOX, NOX, or particulate matter.

Implement projects that create, restore and/or preserve threatened aquatic resources, including wetlands. Mechanisms to accomplish this goal can include:

- Aquatic resource restoration projects.
- Land trust projects to preserve aquatic resources threatened with degradation or destruction by unregulated activities.
- Purchasing and retiring credits from mitigation banks approved by EPA and the Corps.

Examples of nexus include CWA § 404 violations, CWA § 402 violations, and to violations under other statutes in which an aquatic resource or wetland was impacted or potentially impacted by the violation. For example, improper disposal of a hazardous waste which resulted in contamination of a wetland could have an adequate nexus for wetlands restoration or conservation in the same watershed as the affected wetland.